IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 52 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LLOYDS FINANCE LTD. - Petitioner(s)
Versus
CHURAWALA INVESTMENT & FINANCEPVT. LTD. - Respondent(s)

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Appearance :
MR RD DAVE for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/03/2006

ORAL JUDGMENT

1. This company petition is filed by the petitioner for winding up of the respondent

company i.e. Churawala Investment & Finance Pvt. Ltd. under Section-433 and 434 of the Companies Act, 1956.

2. It is the case of the petitioner that the respondent company approached the petitioner with a request vide their letter dated 27.7.1996 for loan against pledge of shares and the petitioner sanctioned the loan and an agreement came to be entered into between the petitioner and respondent company. It is submitted in the petition that in consideration of the Lloyds having granted said loan, the respondent company executed a demand promissory note of Rs.4.00 crores dated 20.9.1996 in favour of the petitioner. It is the contention on behalf of the petitioner that the respondent company defaulted in making the payment of interest from April, 1997 onwards. It is also the contention on behalf of the petitioner that the amount of Rs.3.60 crores was due by way of principal amount as on

January, 2002 together with interest from 1st April, 1997 at the rate of 27 % per annum. It is the contention on behalf of the petitioner that in spite of the repeated requests and demand by the petitioner, the respondent company neglected to pay dues and therefore, the petitioner served statutory notice under Section 434 of the Companies Act, 1956 upon the respondent company and inspite of the fact that the respondent company received said notice, the respondent company neglected to reply to and /or comply with the requisition contained therein. It is the contention on behalf of the petitioner that as on 31.12.2003 in all Rs.8,50,13,356/- is due and payable to the petitioner and as the respondent company is unable to pay its debts and the company is insolvent within the meaning of provisions of Companies Act, 1956, the petitioner has preferred the present company petition for an appropriate order of winding up of the respondent company.

3. Though served, nobody appears on behalf of the respondent company and therefore, by order dated 19.7.2004 this Court admitted the present petition. However, to give one more opportunity to the respondent company, the order of advertisement was deferred and the matter was adjourned to 3.8.2004 for the purpose of passing of the order of advertisement and that by an order dated 3.8.2004 the learned Single Judge of this Court directed for publication of the advertisement in English Daily Newspaper viz. `Indian Express' and daily newspaper Gujarati `Gujarat Mitra' both Surat editions fixing the date of final hearing on 9.9.2004. It seems that the said advertisement could not be published and therefore, request was made to extend the date of final hearing and time for the purpose of publication of advertisement which was granted by the learned Single Judge and thereafter, notice of admission of the present petition was

advertised in the local newspapers i.e. `Indian Express' Ahmedabad Edition and `Gujarat Mitra' Surat Edition both published on 23.2.2006.

4. Learned advocate appearing on behalf of the petitioner has filed affidavit of the petitioner with regard to publishing the notice of admission in newspapers along with the clippings of notice of admission of advertisement in the local newspapers. In spite of the aforesaid, nobody has remained present on behalf of the respondent company to oppose the company petition, nor any other person has come forward to oppose the present company petition. Considering the above and considering the fact that the respondent company has neglected to pay the dues of the petitioner company and is not in a position to survive and the respondent company has become insolvent within the provisions of the Companies Act, 1956, the respondent company is required to be wound up.

5. For the reasons stated above, the petition is allowed. The respondent company is directed to be wound up. The Official Liquidator attached with this Court is appointed as Official Liquidator for the respondent company. The Official Liquidator is hereby asked to take possession of the property (movable and immovable) of the respondent company along with its bank accounts, cash and accounts books etc. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of the Official Valuer for the purpose of preparation of possession note etc. No costs.

The petition is accordingly disposed of.

[M.R.Shah, J.]

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